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SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 478

AMALGAMATED FOOD EMPLOYEES UNION LOCAL 590, ET AL., *Petitioners*,

v.

LOGAN VALLEY PLAZA, INC. AND WEIS MARKETS, INC.

ON A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

MOTION OF RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL-CIO, FOR LEAVE TO FILE A BRIEF AMICUS CURIAE

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Retail Clerks International Association (RCIA), an international, parent labor union which has in excess of one-half million members, respectfully asks leave to file a brief as *amicus curiae* in this case for the following reasons:

1. The RCIA is the largest labor union in the world whose members are employed exclusively in the retail industry. Tens of thousands of its members are presently employed in retail establishments which are situated in shopping centers of the very kind involved in this case.

2. The RCIA engages in extensive efforts to organize and to bring the benefits of collective bargaining to unorganized retail industry employees. A substantial number of these organizing campaigns each year involve employees who

work in stores located in privately owned shopping centers of the very kind involved here. Because the RCIA organizes and represents employees in every sector of the retail industry, the impact of the Court's decision in the case at bar will be greater for the RCIA than for any other labor organization in the United States by far. Moreover, the significance of the issues in the instant case to the RCIA is increasing with each passing day, for the indisputable trend in American retailing, both in the cities and in the suburbs, is towards shopping centers and complexes housing a number of retail establishments under a single roof on privately owned land.

3. The RCIA has been a party to a majority of the cases involving the issue of whether labor organizations have a constitutional as well as a federally guaranteed statutory right to communicate with employees on privately owned shopping center property. See *e.g., Arlan's Dept. Store of Charleston (Retail Clerks),* Case No. 9-CA-3308 (1965); *Freeman* v. *Retail Clerks,* 363 P.2d 803 (Wash. 1961); *Green* v. *Retail Store Employees,* 49 LRRM 3059 (Pa.Ct. Cm.Pls. 1961); *Illinois* v. *Goduto,* 211 Ill.2d 605, 174 N.E.2d 385 (1961), cert. denied 368 U.S. 927 (1961); *Illinois* v. *Mazo,* 44 LRRM 2881 (Ill. Cir. Ct. 1959); *Maryland* v. *Williams,* 44 LRRM 2357 (Baltimore City Crim. Ct., Md. 1959); *Moreland Corp.* v. *Retail Store Employees,* 144 N.W.2d 876 (Wis. 1962); *Nahas* v. *Retail Clerks,* 301 P.2d 932, 302 P.2d 829 (Calif. Dist. Ct. App. 1956); and *Retail Fruit & Vegetable Clerks (Crystal Palace Market),* 116 NLRB 856 (1956), enforced 249 F.2d 591 (C.A. 9 1957).

4. The experience of the RCIA in facing the problems of communicating with employees on privately owned shopping center property covers a period of several decades. This experience has involved not only civil injunction proceedings of the type involved here, but also a number of criminal trespass cases and cases before the National Labor Relations Board. Moreover, the RCIA's experience with this problem is reflected in unreported decisions which are not generally available.

5. While the RCIA has great confidence in the ability of counsel for petitioners to argue fully and fairly the implications of the issues involved in the instant proceeding, the RCIA believes that its unique experience may be useful to the Court in exploring the dimensions of the issues raised by this case. In its *amicus* brief, if permission to file such a brief is granted, the RCIA will delineate specific ways in which the application of state trespass-after-warning statutes have been used to prevent communication with employees in shopping centers and thereby to frustrate substantial federal rights and interests.

6. Counsel for petitioners have consented to the RCIA's filing a brief as *amicus curiae*. Counsel for the respondents have refused permission to the RCIA to file such a brief for the sole reason that "the case before the Court will factually involve a simple trespass only in one shopping center and one store.[1]" We believe that the Court's granting *certiorari* to this proceeding suggests that the Court may regard the case as one which involves the rights of all workers in shopping centers throughout the land.

7. Because of the RCIA's great interest in the outcome of this proceeding as well as because of its unprecedented experience in litigation involving the precise issues involved here, the RCIA's experience and views may be of some aid to the Court. If permission is granted to file a brief as *amicus curiae*, it will be short and relevant, so that the Court's time will not be misspent.

Respectfully submitted,

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November, 1967

[1] Letter from Robert Lewis, counsel for respondents, to counsel for RCIA dated November 10, 1967.

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JOHN F. DAVIS, CLERK

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RESPONDENTS' OBJECTIONS TO MOTION OF RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL-CIO FOR LEAVE TO FILE A BRIEF *AMICUS CURIAE*

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Respondents respectfully oppose the motion by the Retail Clerks International Association (RCIA) for leave to file a brief as *amicus curiae* for the following reasons:

1. The RCIA has failed to set forth reasons for believing that the issues before the Court will not adequately be presented by the parties as required by Rule 42(3) of this Court's Rules. Indeed, in paragraph 5 of its motion the RCIA states that it has "great confidence in the ability of counsel for the Petitioners to argue fully and fairly the implications of the issues involved in the instant proceeding."

2. The RCIA, as a labor organization, has interests and views compatible with that of Petitioner, a labor organization. While the Respondents believe that the Court should have the benefit of *amicus* briefs for its consideration, it is submitted that the permission sought by the RCIA to file a brief will not assist the Court, since it will be cumulative. For example, it states in paragraph 4 of its motion that it proposes to cite to the Court "unreported decisions that are not generally available." The Petitioner contemplates doing the same.[1] Moreover, citation of unreported decisions will not materially aid the Court in its determination of the issues in this case.

3. The RCIA cites decisions in paragraph 3 of its motion which are not relevant to the issues before the Court in the instant matter. Unrelated issues asserted in nonsimilar factual situations cannot aid the Court but can only obfuscate the simple issues before the Court.

4. The RCIA, in its motion, indicates that the Court's granting certiorari to this proceeding suggests that the Court may regard the case as one involving the rights of all workers in shopping centers throughout the land. Respondent submit that such an assumption is totally unwarranted.

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[1] Letter to Michael Rodak, Jr., Deputy Clerk of the Court, from Bernard Dunau, counsel for Petitioners, requesting an extension of time within which to file Petitioners' brief. The letter states the reason for the request for extension as being: "We have undertaken a nationwide survey among attorneys to ascertain the frequency of unreported judicial action and police action in situations of the type which the instant case typifies."

5. For the reasons stated herein, the Respondents have withheld consent to the RCIA's filing a brief as *amicus curiae* and oppose its motion for permission to do so.

Respectfully submitted,

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